

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHARLES AND KRISTINA JENNINGS,

Case No. 3:15-cv-00334-MMD-WGC

Plaintiffs,

ORDER

v.

BANK UNITED, et al.,

Defendants.

This Order addresses two pending motions and the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 12) ("R&R") relating to plaintiff Charles Jennings' failure to pay the filing fee or to submit an application to proceed *in forma pauperis* on his own behalf.

On June 24, 2015, Magistrate Judge Cobb entered an order giving Plaintiff Charles Jennings fourteen (14) days to pay the filing fee of \$350 and \$50 administrative fee or file a completed application to proceed *in forma pauperis* on his own behalf. (Dkt. no. 4.) Plaintiffs were advised that a failure to do so may result in an order dismissing Charles Jennings from this action. (*Id.*) As of July 17, 2015, Plaintiffs had not complied with the Court's order. Accordingly, Magistrate Judge Cobb issued his R&R, recommending dismissal of Charles Jennings from this action. Plaintiffs had until August 3, 2015, to object to the R&R. No objection to the R&R has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and

1 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails
2 to object, however, the court is not required to conduct “any review at all . . . of any issue
3 that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
4 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
5 magistrate judge’s report and recommendation where no objections have been filed. See
6 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
7 of review employed by the district court when reviewing a report and recommendation to
8 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
9 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the
10 view that district courts are not required to review “any issue that is not the subject of an
11 objection.”). Thus, if there is no objection to a magistrate judge’s recommendation, then
12 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
13 Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation to
14 which no objection was filed).

15 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
16 determine whether to adopt Magistrate Judge Cobb’s R&R. Upon reviewing the R&R
17 and the records in this case, this Court finds good cause to adopt the Magistrate Judge’s
18 Recommendation in full.

19 Plaintiffs have also filed an *ex parte* motion for temporary restraining order and
20 preliminary injunction (“Motion”). (Dkt. no. 7.) The Court denied Plaintiffs’ request to
21 address the Motion *ex parte* without notice to Defendants. (Dkt. no. 10.) Plaintiffs have
22 not filed proof of service of the Motion. Accordingly, the Motion (dkt. no. 7) is denied
23 without prejudice to Plaintiff Kristina Jennings to file a renewed motion if the
24 circumstances warrant filing such a motion.

25 Plaintiffs have also filed a motion to remove a state court action to this Court.
26 (Dkt. no. 11.) While titled “Request for Removal,” Plaintiffs’ motion appears to request to
27 transfer the state court action and consolidated it into this case. Plaintiffs cannot seek to
28 essentially transfer a state court action to this court. A suit filed in state court may be

1 removed to federal court if the federal court would have had original jurisdiction over the
2 suit. 28 U.S.C. § 1441(a). To the extent Plaintiffs are attempting to remove the state
3 court action, they have not followed the proper procedure for removal.

4 It is therefore ordered, adjudged and decreed that the Report and
5 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 12) be accepted and
6 adopted in its entirety. Plaintiff Charles Jennings is dismissed from this action as a
7 plaintiff, without prejudice.

8 It is further ordered that Plaintiffs' ex parte motion for temporary restraining order
9 and preliminary injunction (dkt. no. 7) is denied.

10 It is further ordered that Plaintiffs' motion to remove (dkt. no. 11) is denied.

11 DATED THIS 2nd day of October 2015.

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14 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE
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